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## THE HOWLAND WILL CASE.

By the courtesy of the publishers of *The American Law Review*, the following extract from the pages of that magazine (vol. 4, pages 629-54) is appended for the elucidation of Prof. Ewell's reference, *supra*, page 556 :—

The will of Miss Howland was duly proved in the Court of Probate for Bristol County. An appeal was then taken by Miss Robinson, on the ground that the testatrix was incompetent to make a will by reason of mental and bodily weakness and infirmity; and that being in feeble health and of weak mind she was unduly, improperly, and illegally influenced by those about her. But the appeal was shortly after withdrawn, and the decree of the Probate Court affirmed by the Supreme Judicial Court, at the November term, 1865. On the second day of December, 1865, Miss Robinson filed in the Circuit Court of the United States for the District of Massachusetts, she being then, as she alleged, a citizen of New York, a bill of complaint against the executors and trustees, which initiated this litigation.

This bill, in addition to the facts to which attention has already been called, makes in brief the following allegations: that the complainant had been educated by her aunt, who had long stood to her in place of her mother, and that her aunt, being at variance with her father, and being anxious that no property from the Howland stock should come to him, had requested her to make a will excluding her father from inheriting her property, and had agreed to do likewise; that thereupon she and her aunt had made mutual wills excluding her father from such inheritance, and had exchanged them; and that it was agreed between them that neither should make any other will without notifying the other, and returning the other's will; that this had never been done, and that the complainant had no knowledge that her aunt had ever made another will until after her death. The bill alleges, in ordinary form, the execution of the will; and then it is alleged that "before signing the said will, the said Sylvia Ann signed the paper writing called therein the second page of this will, which last mentioned paper was attached to the said will by the said Sylvia Ann before the said will of the said Sylvia Ann was signed by the said Sylvia Ann;" that this paper was delivered to the complainant with the will; that in reference to the statement contained in the paper, "excepting about one hundred thousand dollars in presents to my friends and relations," the complainant when she received the will, promised to distribute this amount among such persons as her aunt should designate, and that her aunt did designate certain persons to whom this sum should be paid. The prayer of the bill was for the specific performance of this agreement, and that the executors should be decreed to hold her aunt's property (all of which was, by the will, said to have been made in accordance with this agreement, left to Hetty, absolutely), in trust for her, and should be ordered to convey it to her. To the bill was annexed a copy of the will then made by the complainant, bearing date September 9, 1860, which,

after bequeathing her property to her children, should she have any, gives the whole of it in case of her decease without issue, to the Home for Children in New Bedford.

Of the aunt's will, the following is a copy. How much of the date was written at the execution was disputed. The *italics* are hereafter explained.

*First Page.*

Be it remembered that I, Sylvia Ann Howland, of New Bedford, in the county of Bristol and Commonwealth of Massachusetts, of lawful age, and of sound and disposing mind and memory, do make, publish, and declare this my last will and testament in manner following to wit :—

First. I give and bequeath unto my niece, Hetty Howland Robinson, all my Real and Personal estate, goods, and chattels, of every description, including the Round Hill Farm, and every thing thereon ; house on the cor of Water and School and First, and every thing on and belonging land and buildings to her the said Hetty H. Robinson, and her children and assigns for ever.

Second. If the said Hetty H. Robinson dies without children or grand-children before me, I wish it to go to the Charity Schools and institutions named in will of 1856,—3 month, 4th day,—with these trustees, Thomas Mandell, Cornelius Howland, Henry Taber.

*Third Page.*

Third, I appoint Thomas Mandell of New Bedford, Executor of this my last will and testament *also Executor of the 2d page of this will.*

In witness whereof I have hereto set my hand and seal this *eleventh* day of *January*, in the year of our Lord one thousand eight hundred and sixty two.

*Sylvia Ann Howland, (SEAL.)*

Signed, sealed, published, and declared by the said Sylvia Ann Howland, as and for her last will and testament, in presence of us, who, at her request, and in her presence, here hereto set our names as witnesses.

*Peleg Howland, (SEAL.)*

*Kezia R. Price, (SEAL.)*

*Electa Montague, (SEAL.)*

And to this is annexed the singular paper following, known throughout the case as the——

*Second Page.*

Be it remembered that I, Sylvia Ann Howland, of New Bedford, in County of Bristol, do hereby make, publish, and declare this the second page of this will and testament made on the eleventh of January in manner following : to wit, hereby revoking all wills made by me before or after this one—I give this will to my niece to shew if there appears a will made without notifying her, and without returning her will to her through Thomas Mandell, as I have promised to do, I implore the Judge to decide in favor of this will, as nothing would induce me to make a will unfavorable to my niece ; but being ill and afraid if any of my caretakers insisted on my making a will to refuse, as they might leave or be angry, and know-

ing my niece had this will to show—my niece fearing also after she went away—I hearing but one side, might feel hurt at what they might say of her, as they tried to make trouble by not telling the truth to me, when she was here even herself. I give this will to my niece to shew, if absolutely necessary to have it, to appear against another will found after my death. I wish her to show this will, made when I am in good health, for me; and my old torn will, made on the fourth of March, in the year of our Lord one thousand eight hundred and fifty, to show also as proof that it has been my lifetime wish for her to have my property. I therefore give my property to my niece as freely as my father gave it to me. I have promised him once, and my sister a number of times, to give it to her, all excepting about one hundred thousand dollars in presents to my friends and relations. In witness whereof I have set thereto my hand and seal this eleventh of January, in the year of our Lord one thousand eight hundred and sixty-two.

SYLVIA ANN HOWLAND. (SEAL.)

The answer of the executors is quite long, and alleges a great many matters in defence. It denies that the complainant was educated by her aunt. It admits Hetty's ill-feelings towards her father; but denies that any such existed between her father and her aunt. It alleges their ignorance of the secret arrangement as to the mutual wills, and states that if any such existed, it had its origin in Hetty's ill-feelings toward her father. It alleges that Mr. Mandell had care of Miss Howland's property for thirty years; that she never manifested any desire that Hetty should have the whole; but that during this time she made several wills inconsistent with such desire; that if Miss Howland signed the second page, she did so without such knowledge or understanding of its contents as would in law or equity bind her; that its contents are at variance with Miss Howland's well-known wishes and sentiments. It denies, on information and belief, the attachment of the "second page" to the will, and the circumstances of its delivery to Hetty alleged in the bill; and it avers that Hetty knew of the will admitted to probate.

The answer also alleges that the will and "second page" are in the handwriting of Hetty, and that if her aunt signed the latter, she was forced to do so by her niece's continued importunity and undue influence; that Hetty took back into her possession her own will, and has since made other inconsistent wills.

The answer then sets up as defences, in matter of law, that upon Mr. Robinson's death, the consideration of the alleged compact failed; that, in any event, it was void as against good morals and public policy; that considering the large property possessed by the aunt, and the comparatively insignificant sum held by the niece, it was unequal and unconscionable; that by Mr. Robinson's death, the agreement became inoperative because no money could be left him; that its terms are too vague to be enforced; that her father is not legally excluded by Hetty's will, but might possibly inherit; that Hetty's will was revocable by marriage; that Mr. Robinson's death absolved Miss Howland from notifying Hetty of her change of intention; that the will of Miss Howland was not in conformity

with the agreement ; that the probate of the will was conclusive upon the questions raised by the bill ; that the alleged agreement was not in writing, and void by the Statute of Frauds ; and, generally, that such an agreement was void, and could not be enforced in equity.

The will of Miss Howland and "the second page" were admittedly, as alleged in the answer, in the handwriting of the niece ; the signature, "Sylvia Ann Howland," being all that was claimed to be in the aunt's handwriting. The main issue of fact raised was whether the signature to the second page was written by Miss Howland, or whether it was a forgery. If it was a forgery, of course it followed that the complainant's case, which rested mainly on her own evidence, was but a tissue of fraud. The object of the defence of the executors upon matters of fact was to cast such taint upon the agreement that sufficient credence could not be given to the story to justify a court of equity in decreeing specific performance, or if belief could be attained in the existence of the agreement and the genuineness of the "second page" to show the agreement so unfair, indefinite, and inequitable, and so contrary to the public policy, that a court of equity would decline to order its specific execution.

Desiring, therefore, to set down the facts, as they are found recorded in the printed testimony of the cause, and not our own conclusions, we proceed to notice the evidence of the complainant. This at once divides itself into two distinct parts : *first*, the evidence tending to prove the facts of the agreement for the mutual wills, the execution of Miss Howland's will with "the second page," the delivery of these to the complainant, the execution of the complainant's will, its delivery to Miss Howland and its subsequent discovery among the effects of Miss Howland after her death ; *second*, the evidence brought to contradict the testimony of the respondents of the forgery of the signature to "the second page." The *first* class consists of testimony of facts, the *second* of testimony of opinion.

Considering, then, this *first* class, it is found to rest mainly upon the complainant's testimony. The other witnesses to facts do little more than corroborate her in certain particulars. To the actual agreement itself there is but the single testimony of the complainant, corroborated by no living witness, but solely by "the second page" in her own handwriting, the authenticity of which rested solely upon the genuineness of the signature of the aunt.

Hetty Robinson draws this picture of her aunt : an old woman, from her birth an invalid ; weak in body, but sound in mind ; timid, anxious, surrounded by house-keepers and nurses who constantly looked for her death, and longed for their own expected legacies ; sharp old New England females, called by the expressive term, "care-takers ;" depending solely upon Hetty, loving her, fearing "the care-takers," saying, "they would not get the advantage of her as long as she had any strength left ;" "that she would pacify them by telling them that she would give them (not leave them) money, which would make it for their advantage to keep her alive ;" trusting wholly in her only niece ; so nervous as for many years before her death to be unable to write anything but her name ; subject to such "distressed spells," that she could hardly write a letter, and

therefore making this niece not only her confidant, but her amanuensis ; of herself as substantially the adopted child of her old aunt, under her care as a child, as a woman never doing anything of importance without her aunt's knowledge ; living with her many years in the closest of intimacy, protecting her from the "care-takers," the prop and support of her old age. She tells of the indignation felt by Miss Howland at Mr. Robinson's taking the property of his wife according to Judge Thomas's opinion. "She was so much grieved about it," she says, "crying, to think that my father had enough already of the Howland estate."

Then she goes on to tell of the compact. "She asked me if I would make a will satisfactory to her, she would make a will in my favor, so that my father could get no more of the Howland estate, and we would make a solemn contract that neither will should be revoked without returning the other's will to the other through Thomas Mandell. She was to keep mine and I hers: mine to stand just as it was until hers and my father's death. Her will I had was to be until her death." To this proposal the niece, as she says, agreed. Through the mediation of Mr. Tucker, Mr. Prescott, of New Bedford, drafted a will for Miss Robinson ; but as this contained a legacy to Mr. Robinson, his sister-in-law objected to it ; and the two women, being then at Round Hills, sitting down and using a slate, and referring to the Prescott draft for forms, taking a number of days for the work, the aunt dictating, the niece writing, finally accomplished the will of Miss Robinson, leaving all her property to her issue, or, failing issue, to the Home for Children. This was subsequently executed and witnessed, placed in a long yellow envelope, and given to the aunt to be kept among her private papers. This will was written, excepting the date, at Round Hills, and was signed by Miss Robinson in black ink. When she came up from Round Hills, she wrote over her signature in blue ink, adding also the date (Sept. 9, 1860) in blue ; then the witnesses signed.

The slate was used in drafting the aunt's will at Round Hills. Two drafts were made and brought up to New Bedford, one of which was the will subsequently executed, which has been given on page 563. The words printed in *italics* were not then written. The will was not executed, for the reason, as Miss Robinson explained, that both aunt and niece thought that the later a will was executed prior to the testatrix's decease, the more binding it would be. This was in the summer of 1860. There was then in existence, a former will of the aunt's, made in 1850, with a codicil in 1854, in the care of Mr. Mandell. This will, a very long document, placed her property in trust, and, after some legacies, gave the income to her sister and niece ; and after their death, divided it in certain proportions between Hetty's issue and charity. This, the complainant says, her aunt cancelled in August, 1861 ; tearing off her signature, and giving it thus mutilated to her niece, "to show that I had the whole income after my mother's death, and also, as she had torn her signature off, to show that it was not satisfactory to her."

We next come to the niece's account of the execution of the will, drafted, according to her story, in the summer of 1860, but bearing date the 11th of January, 1862, and its curious and singular connection with the

second page. The story passes to January, 1862. The aunt and niece are then at New Bedford, at the aunt's house; and Miss Robinson relates the following events as occurring between the 1st of January and the 11th, the day of execution of the will. Taking the slate, the two women compose the contents of "the second page," and Miss Robinson copies it out on paper,—a copy subsequently burned.

Then a will is written out on paper substantially the same as that given on page 563, except that the document known as the "second page" is incorporated in it, and forms its *second page*. Hence the origin of the term "second page." This is exhibit numbered 11. It is produced, and is in the niece's handwriting. It did not bear Miss Howland's signature, and was never executed, as explained by the complainant, "because my aunt so assured me that they would not get the advantage of her, saying, that if she broke her promise to her niece, that she had taken from her dying mother to live with her again, that she would be worse than most any one in the House of Correction, because they wouldn't lie to their relatives as a general thing. . . . If they do get a will out of me, it will be after I have no strength to oppose them; and you will see how rapidly I will fade away. If they are bad enough to tease me to make a will, after I have distinctly told them that I have promised not to, any will that they would get me to make, it would take a great deal to satisfy them. And they would have so much of human nature, it would be to their interest to get possession of their money, being human nature enough to say, 'Poor Miss Howland, she can't enjoy life, she suffers so much.'" The niece, as she says, then suggested to her to leave out that part called the second page, "because it would be very awkward for me to have it recorded, if they did not succeed in having her to make a will,—if the caretakers did not succeed." It was then arranged that the "second page" should be written out separately, and attached to a will in a manner which would render it easily detached. "If they did not get the advantage of her, then I could detach it, only showing it to Mr. Mandell, and perhaps the judge; and if they did get the advantage of her, telling the judge that it was,—that she hoped that he would take them as words that she would say if she was alive. Then," says Miss Robinson, "I was to copy the 'second page' of Exhibit 11 (the draft, we repeat, of the will incorporating the second page, and thus giving, as it was claimed, the designation 'second'), beginning it something as a will, and ending it something as a will." By her aunt's permission, she then added a few words to the draft made at Round Hills, namely, the words printed in italics, "*first page*," "*third page*," "*also the executor of the 2d page of this will*," and the date. Then she wrote out two copies of the "second page." Both of these her aunt signed,—one in the morning of the 11th of January, the other after tea the same day. The niece took "very fine thread," and caught both these copies to the first page of the will, and arranged them in such a manner that they could not be seen by the attesting witnesses. In the evening, Peter Howland, Keziah R. Price, and Electa Montague were called in. The old woman told her niece to stand by, and if she forgot to say it was her last will and testament, to suggest to her to do so, and thus the will was executed. She read it over next

morning, says her niece, "putting her hand on a Bible where the names of her relatives were registered." About this time, too, was composed the list of the relations among whom the \$100,000 were to be divided. A slate of these was made up, and a copy kept by the niece, while at the same time another copy was prepared on tissue paper, and kept by the old lady in her spectacle case, for easy reference. The duplicate second pages remained attached to the will but a single night. Next morning, the very fine thread was severed by Hetty in the presence of her aunt. One duplicate was given to her to take to New York, with directions to reattach it to the will, should the influence of the care-takers overcome the invalid's resolution ; while the other was placed in a white envelope, together with a copy of the will, and retained by Miss Howland.

The duplicate selected for the niece was that signed after tea, for the curious alleged reason that, being signed nearer the moment of the execution of the will, it more nearly resembled the signature to that instrument than that signed earlier in the same day.

Time goes on, and in a little more than three years from these events the aunt dies. On the evening of the day, or the day after, her funeral, the niece, with Mrs. Brownell the house-keeper, go to a little hair trunk in a closet, where the aunt was in the habit of keeping her papers. The search is for Miss Robinson's will. They do not find that, but do find the white envelope containing the copy of the aunt's will and the duplicate "second page" (known as Exhibit 15) retained by her. Next morning the search is renewed, in the presence of Mr. Edward H. Green, to whom Miss Robinson is now betrothed, and the long yellow envelope containing her will is discovered and opened. The niece has never heard of the new will. The mutual contract has been violated, and thus ends the story.

To this secret agreement between the old woman and the young, there is professedly no corroboration. Its very essence was secrecy. The complainant tells her story. The lips of the other party to the contract are closed in death. No human eye had ever beheld these duplicate second pages before the death of the woman who is claimed to have signed them. They were purposely hidden from the witnesses who signed the will of which they are alleged to be a part. These witnesses each tell the story of their witnessing Miss Howland's will. The execution of Miss Robinson's will also is proved. Mr. Green gives an account of the discovery of the papers in the aunt's trunk after her death. Miss Virginia R. T. Gerrish corroborates the complainant as to the intimate and affectionate relations testified by her to have existed between her aunt and herself, and relates that, in New York, on the Sunday evening when the news came of Miss Howland's death, the niece produced and read to her the will and "second page." This, with the documentary evidence, makes the complainant's case,—always excepting the expert testimony as to the genuineness of the several documents, of which hereafter. And to this should be added the admission contained in the answer of one of the defendants, Dr. Gordon, whether the conclusions to be drawn from it are favorable or unfavorable to the complainant, that Miss Howland had said to him in substance, "I would rather not make a will if I could help it, on account of Hetty. I have been obliged to promise her that I would not make a will without



letting her know it." Also, "that, she would make a will if it was not for her pledge or promise to Miss Hetty," and that she said, as a part of the last conversation, "I was forced to promise her so, she dinned me, and teased me, and gave me no peace till I did;" that she asked Gordon his advice, and that thereupon he said that he believed a promise extorted from one was not considered binding in honor or in law, to which Sylvia Ann replied, "No? Well, it was so, it was forced from me."

We turn now to the evidence of the executors. Their foremost defence is forgery. They claim that the signatures to both the duplicate second pages—Exhibits "10" and "15"—were forged by Miss Robinson by tracing from the signature to the will admitted to be genuine. This charge they attempt to support by a vast mass of expert testimony, which will be considered in its proper place. It is not only however upon this expert testimony of the falsity of the signature that the executors rely. Taking up the complainant's testimony, they proceed to introduce evidence tending to contradict it in a number of particulars. The care-takers are called "nurse-witness-legatees," as they are characterized by Miss Robinson's counsel, and proceed to give a very different account of the relations existing between the aunt and niece. Electa Montague, one of the care-takers, a veteran companion of aged ladies of New Bedford; Sally Brownell another care-taker, the house-keeper, for over twenty years a servant of Miss Howland's; Sarah Howland, a distant connection, but a constant visitor, who nursed the old woman in her last illness; Eliza H. Brown, the night nurse; Hetty H. Hussey, her cousin; Joanna Curtis, the cook, all substantially concur. They represent the relations existing between the aunt and niece as not always the most agreeable, and depict themselves as the faithful friends upon whose consolation and support the old lady was wont chiefly to rely. They are most of them legatees under the last will, and profess little love for the complainant.

By these, and other witnesses, the defendants endeavor to paint in different colors the facts testified to by the complainant, and to throw new lights upon affairs at Round Hills and New Bedford. It would be impossible, in the limits of this article, to detail their varying success or failure in controlling the niece's testimony. In a cause as carefully tried as this, so elaborately argued, scarce a fact is elicited on this record of a thousand pages, which does not tend to sustain some theory, some probability, on the one side or the other. Some striking points of the defendant's case only can be mentioned. By the evidence of the relations of the parties, it was claimed the improbability of the contract was demonstrated. It was argued, too, that this duplicate paper contained statements in regard to Miss Howland's faithful attendants, false in fact, contrary to her daily expressions of feeling and habits of thought. Much evidence was introduced that, so far from the will being readily made by the aunt in fulfilment of a contract, "a clear understanding," it was executed only after long and persistent importunities of the niece. It was claimed that the draft of the aunt's will, executed January 11, 1862, was not made in 1860 with the niece's, to be afterwards executed, that it was never written until 1862. The paper itself was relied on to show this, and expert testimony brought to prove this date to have been written at the

same time as the body. The unexecuted will, incorporating the "second page," Exhibit 11, contained a blot or erasure of the date, explained by Miss Robinson to have been made because of a change of the day on which it was to have been executed. It is argued that this paper was never prepared before the eleventh day of January, 1862, as it must have been to account for the term "second page," used in the will and elsewhere; but that it was subsequently written by the niece, and that the date was destroyed by acids (traces of which were found on it by experts) for the purposes of the case; an argument most ingeniously met by the complainant's counsel by the suggestion that the ink-bottle getting low was reinforced by the vinegar-cruet, and by the more convincing, if less ingenious, argument, that if Miss Robinson desired to produce a false paper wholly in her own writing, she could have as easily made a fair copy, bearing no marks of erasure, as brought into court one which bore signs of acid on its face.

Letters are produced from Hetty, showing her style to have been the same as appears in the second page. Former wills of the aunt are introduced, in none of which, as in that of 1850, already referred to, did she leave her whole property to the niece, and strong declarations in favor of the one admitted to probate are put in. "I have made it good and strong; Edward Robinson," she said, "would not dare to put down such a man as Dr. Bigelow" (one of the witnesses of this will).

The omission of the father's name from the niece's will was claimed to have been actuated, not by the aunt's advice, but by the taking of the trust-money by the father, which, it will be recollected, occurred in 1860, the year both of the mother's death and the niece's will.

*Signature to the Will (No. 1).*

*Lydia Ann Howland*

*Signature to "second page" (No. 10).*

*Lydia Ann Howland*

*Signature to "second page" (No. 15).*

*Lydia Ann Howland*

Contradiction is made of the placing the papers in the trunk, and of their discovery. Mrs. Brownell, who had constant charge of the trunk and keys, says that Miss Howland wished her to put the yellow envelope (containing Miss Robinson's will, it will be recollected) into the trunk "for Hetty;" that she put in a white paper in 1860, soon after Mrs. Robinson's death; but since that time no other papers, except bills and receipts once a year, and that the yellow paper was put in *after* the white. When and by whom then, it is asked, was the white envelope put into the trunk? Mrs. Brownell and Miss Montague also contradict some of the details of the discovery of these papers, Mrs. Brownell not having been present, according to their account, when the yellow envelope was found.

Testimony is produced to show that the aunt and niece were not together at Round Hills in the summer of 1860, when the alleged contract was made, and the slate so much in use; that Miss Howland only drove there occasionally that summer. The same witness, the hack-driver Pardon Gray, testifies that the complainant told him in reference to the will ultimately proved, of the existence of which she says she was ignorant, "that they need not have been so secret about making the will, for she knew all about it soon after." The conduct, too, of the complainant after her aunt's death, in not referring to any agreement, but in endeavoring to have her aunt's will set aside on other grounds, is much relied on.

Thus, wherever a discrepancy could be discovered, or an improbability pointed out, the defendants have done so; but, after all, their main reliance, and the chief struggle, was over the genuineness of the signatures to the duplicate "second page," Exhibits 10 and 15; and it is for the extraordinary conflict of expert testimony, demonstrating how completely scientific opinion may differ, that this case, after the interest awakened by the magnitude of the struggle has died away, will be most famous in the annals of the law. Here were three signatures of Sylvia Ann Howland: one to her will of 1862, Exhibit 1; one to each duplicate second page, Exhibits 10 and 15. That to the will was confessedly genuine. But it appeared upon superposing the other two over this, that the covering was so exact, letter for letter, stroke for stroke—"10" (the duplicate "second page" given to the niece) somewhat closer than "15" (that kept by the aunt, and found in the trunk)—and that not merely this covering existed, together with identity of all the spaces between the letters and the words, but that the locality on the paper and the distance from the margins of the signatures so nearly coincided, that the defendants, supported by the opinion of some of the best experts in the country, were led to bring forward the theory that this extraordinary coincidence was not the result of chance, but of design. They claimed that these signatures had been forged to these papers by the complainant, by tracing upon the original signature of the will. It was, *a priori*, beyond the bounds of probability, they argued, that this coincidence of precise covering could occur, in short, practically an impossibility; but infinitely incredible, that just the signature the plaintiff wanted should match the only one she had. They claimed that the signatures 10 and 15 bore in themselves marks of tracing, and produced a large number of bills of lading signed by the deceased, none of which, they claimed, bore the characteristics of the disputed signatures.

This issue was fully and squarely met by the complainant's counsel. They answered that, the idea that no two signatures could cover was false in theory and in fact, and they produced signatures of many well-known persons, which they claimed covered better than the signatures of the deceased lady. They met expert by expert. Wall Street and State Street furnished their most eminent judges of handwriting to the one side or the other. The rival "commercial colleges" sent presidents and representatives, each equally positive, and ready to support by oath the truth of their several opinions. The Coast Survey sent on from Washington one of its most eminent members. The science of photography was exhausted in the variety and number of pictures of the disputed signatures. Recourse was had to the magnifying glass. Numberless exaggerated images of the words "Sylvia Ann Howland" were manufactured, and appear upon the files of the court in immense books of exhibits; and not merely of these signatures, but of the many which are claimed to cover as well as the disputed signatures; and of other signatures of the testatrix, of the will itself, of the papers 10 and 15. Learned chemists were called, who gave their judgment of the ink. Skilled engravers, habituated in the art of tracing, pored over the strokes and curves of the letters. Harvard University contributed to the list of witnesses three of its most distinguished names. The most celebrated mathematician of the country was invoked, who stated the doctrine of chances with a precision and solemnity which astounded the uneducated understanding. The learned physician, so famed both in poetry and science, applied his microscope, and gave his opinion. The naturalist, whose name on both continents is second only to Humboldt's, who, as he testified, began natural history as a child, and is to-day a student, gives his analysis with characteristic zeal and earnestness.

The testimony of witnesses developed weeks of laborious preparation. Before they came on the stand, many of these witnesses passed months in the closet, working sometimes ten hours a day, comparing, analyzing, photographing, magnifying, doing every thing that science and experience could suggest, to fit themselves to give a correct opinion. They produced the result of their labors in the elaborate magnified exhibits, which, bound in large volumes, are lasting proofs of their diligence and ingenuity. Not a curve in a letter, not a down stroke, or an up stroke of the pen, not a dot of an *i* or a cross of a *t*, or a waver of the hand, but what has been subjected to the most searching examination under powerful microscopes, while essays are read upon the philosophy of handwriting, in theory and practice. Page follows page of minute criticism of hair-lines, loops, curves, turns, body strokes, and so on, to utter weariness. Yet, after all, with what result?

No slur can be cast upon the integrity of any of these gentlemen. They have no interest in the result of the suit. Their characters are above suspicion. Truth is primarily their object. Did that old woman beyond the grave, sign those two papers? On this side of the grave, the niece alone knows. The niece says she did. But for this, if an untruth, she is to have millions. Can science give her the lie? So scientific men pore over these nine little words for many months. They apply to them

the many instruments that the laboring brains of former scientific men have invented, and the scientific data of past years. Yet, with all this, they stand ranged on the one side and the other, differing from and contradicting one another, not only on the main question of the forgery, but in a thousand more minute but still important particulars, equally confident of adverse opinions, until the brain of the unprejudiced reader of this mass of conflicting opinions swims with confusion, and he asks, with "jesting Pilate," *What is truth?* Thus the result of so much labor of experts,—their skill, their ingenuity, their patience, their anxiety, simply demonstrates to the profession their inutility as witnesses in a court of justice. Fact is untrustworthy enough.

Of a single occurrence a hundred different accounts may be given in good faith by honest spectators. But when we come to opinion, who shall state the limit of discrepancy, or dare to name the number of conflicting theories? Let it not be understood that it is desired to cast reflections upon science, nor upon the curious and ingenious means which it supplied,—unhappily not for the elucidation of this case. Let any one take the testimony of either one or the other side to this controversy, and he will marvel at the precision with which it was possible, by the resources of science, to supply the conclusions which were wanting to facts. Let one read only the evidence of the defendants, and, however little prone to moralize, he will wonder at the appliances of modern art which has detected, both by mathematical demonstration, and by an analysis of handwriting and chemical investigation, very nearly amounting to mathematica demonstration, a hidden crime, and made it as patent as the daylight. This, he will say, is providential. No link is wanting. The discovery of the footprint, the traces of blood, bears no comparison to this. Hereafter, the curious stories of Poe will be thought the paltriest imitations, when real life affords such an instance of the detection of guilt by the unanimous testimony, not of eye-witnesses, but of bankers, photographers, writing-masters, mathematicians, and naturalists. So positive is their testimony, so exact in its details, so nicely does one fact fit the other, and so curiously is each explained and reconciled, that the eye will almost see Hetty H. Robinson holding to the window the genuine document, folding over it the spurious paper, wetting her pencil, and tracing the words, and then covering the pencil tracings with ink.

But let the testimony of the complainant's experts alone be read, and the picture is wholly changed. The providential detections of science become unjustifiable slanders; it is the old woman who has traced, with trembling fingers, her fixed and formal autograph. The genuineness is beyond a doubt, and is patent upon a comparison with the aunt's former undisputed signatures. The signs of tracing are but the nervous trembling of old age; the curious covering, the not unusual result of writing from the wrist, in a cramped position, by an aged woman, unused for many years to write more than her signature.

Who then shall decide when such doctors disagree, or do more than review their testimony, and wonder, on the one hand, at its ingenuity, its research, and its elaboration; on the other hand, at its curious discrepancies, its multifold and manifold contradictions? Take first that of the

defendants, for with them the discussion originates. At the head of their experts, marches *Albert S. Southworth*, one of the earliest photographers in the country, for twenty-five years engaged in this business ; once a teacher of penmanship, and for six or seven years much devoted to questions of hand-writing, a frequent expert in courts of law. The study of these signatures and these enlarged photographs has occupied him for weeks. "The two signatures," he says,—Nos. 10 and 15,—“are simulated signatures of the hand in the standards and in No. 1, and are made up, traced, and copied by another hand from No. 1, as an original, and are not genuine.” He produces magnified riders of transparent paper, superposing the supposedly spurious upon the admittedly genuine signature, to show the exactitude of the covering. He came to this opinion, he says, by being shown the papers in the clerk’s office by a perfect stranger, who afterwards proved to be one of the defendants’ counsel. He compares the disputed signatures with others of the aunt’s admitted to be genuine, also with the writing of the body of the disputed instruments admitted to have been written by her niece, and declares these disputed signatures to have been written, not by the aunt, but by the niece ; and he adds,—

“And my mind would have come to the same conclusion had I not have had any genuine writing of *Sylvia Ann Howland’s* before me. I should say also, with the signatures 10 and 15 alone, I should have considered them simulated without any other writing whatever. Taking either of them separately, I should have believed them simulated from the internal evidence in each ; and taking them with the signatures of *Sylvia Ann Howland* in either of the three particulars which I have mentioned, alone, with the filling ; and altogether, in either of those three, there is overwhelming evidence, in my own mind that signatures to Nos. 10 and 15 are not genuine.”

He goes over the writings, letter by letter, curve by curve, with enormous detail, and, in comparing the disputed signatures with the filling of the papers in the niece’s hand, adds the following curious commentary :—

“Indeed, it is more difficult to find forms and characteristics unlike, and not presenting characteristics in 10 and 15, than it is to see those that are natural and the habit of the hand ; and the whole answer to the question may be, that there is scarcely a point or a place where the hand is not distinctly traced. Not that one of these points or places, or two, or ten, constitute sufficient ground for an opinion ; but in their mathematical arrangement, and absolute harmony in every respect, disconnected from the simulation of the signatures in 10 and 15, they are like the footsteps of an individual, under different circumstances,—sometimes slow and sometimes rapid ; sometimes on a hard path, and sometimes in the sand ; sometimes with the measured tread on the floor, or on tiptoe on the muddy flag-stone ; sometimes in the slipper, in the boot, or in the rubber, or barefoot ; sometimes in the jostling crowd, the measured step to the drum, the whirl of the giddy dance ; and in every other position in which the step or mark could be seen, measured, compared, and recognized,

mathematically. So many combinations of characteristics are circumstantial truths to my mind, making it an absolute demonstration."

*John E. Williams*, for ten years president of the Metropolitan Bank of New York city, declares 10 and 15 spurious, and "has no doubt whatever of the correctness of the conclusion to which he has come."

*Joseph E. Paine*, of Brooklyn, an accountant of thirty years' experience, an expert who accomplished the curious feat of the pen, known as the "Emancipation Proclamation," states the signatures 10 and 15 not to be genuine, and to have been undoubtedly formed by tracing in some one of its various methods. When asked as to his confidence in his opinion, he answers, "I should say the next degree to knowing absolutely who did sign them,—seeing them signed. I mean by that I have not a solitary doubt that they are forged or simulated signatures."

*George Phippen, Jr.*, of Boston, for twelve years assistant paying teller of the Suffolk National Bank, declares it impossible for any person to make a signature that shall so closely resemble another, that he has tried his own signature hundreds of times, also the signatures of others, and never found two signatures of his own or of others that would match exactly with each other in every detail; that he has "no possible doubt" of the want of genuineness of 10 and 15.

*Solomon Lincoln*, formerly cashier, now president of the Webster National Bank, declares that his degree of confidence that the signatures are not genuine amounts almost to moral certainty; that he has frequently tried to write alike for the purpose of making uniform signatures to bank-bills; but always without success.

*Charles A. Putnam*, a broker and banker of Boston, for twenty-three years connected with banks as clerk, teller, or cashier, pronounces 10 and 15 not genuine, and "has hardly a doubt" on the subject.

*George N. Comer*, the well-known president of the Commercial College in Boston, who has made, he says, the critical examination and comparison of handwritings a study for twenty-five years past; who has been consulted as an expert in handwriting continually during the whole of that time; who has testified as an expert in various courts of this and other States upwards of two hundred times; and has been consulted in probably a dozen cases, for every one in which he has testified,—declares that 10 was copied by having been placed over 1, and written with a lead pencil wetted, and then written over with pen and ink; that 15 was written over the signature of 1, without the intervention of wetted pencil or similar material; that he is "as confident of this as if he had seen them written;" that the writing of no two persons stains the paper, that is, produces the same microscopical effects, in the same way, and that the ink in 10 and 15 stains the paper in precisely the same way as the body of these papers, and not as the genuine signature in 1; that the same hand wrote 10 and 15 that wrote this filling, and that he gave these opinions with no knowledge of the merits of the case on the side that asked his opinion.

*James B. Congdon*, treasurer and collector of New Bedford, for thirty-two years cashier of Merchants' Bank of that city, declares it his opinion that it is "utterly impossible for any individual to write his name three

times so that the resemblance may be such as appears in 1, 10, and 15 ; that he has examined the signatures of eleven different persons, five hundred and seventy-two signatures, rendering necessary thirty-seven thousand seven hundred comparisons, and found no such resemblance between any two of them ; that his conviction is entire and undoubted that they are not the signatures of Sylvia Ann Howland."

*William F. Davis*, of Boston, broker, formerly clerk in the Suffolk Bank, for twenty years a student of handwriting, has no doubt in his own judgment that 10 and 15 were traced from 1.

*Alexander C. Cary*, manager of the Boston office of the American Bank Note Company, gives much the same testimony. He declares that 15 slipped in the tracing. He feels certain of all this. There is "no doubt whatever" in his own mind.

*George C. Smith*, an engraver since 1811, from his experience of over half a century, declares that, assuming 1 to be genuine, the others could not possibly be ; that he has never known three signatures so to correspond.

*John E. Gavit*, of New York, president of the American Bank Note Company of the city of New York,—the principal company in the world,—has never in his experience found two signatures by the same hand absolutely identical, *fac-similes*, and states with a "great deal of confidence," though feeling it to be a "grave case," his opinion of the tracing.

*George A. Sawyer*, of Boston, a writing-master and student of handwriting, declares it his "conviction" that the signatures to 1 and 15 are false. He says,—

"They are not natural : they are studied. They exhibit great effort to make them look exactly like No 1. Superpose 10 on 1, they will almost perfectly coincide throughout, although there is no line to guide the hand in writing. Match the margins of the papers 10 and 1, and the signatures will superpose ; the distance from the margins on either side of the signatures of 10 and 1 are the same on the corresponding sides. There is uniformity in length of signatures and spacing of the letters. No. 1 indicates a trembling hand, but perfectly natural movement. No. 10 shows great effort to imitate No. 1, and although quite successful in some parts, yet fails in others. The effort to imitate a trembling hand exhibits more of a vibratory movement. There is evidence of retouching, and this retouching is apparently done with great care. Nos. 10 and 15 exhibit more firmness of hand than No. 1. It is remarkable that the signatures of 1 and 10 coincide so perfectly without any line to guide the hand. The impression that I received when I first saw the signatures 1 and 10, was, that No. 10 was not natural ; I have seen nothing in subsequent investigation to change that impression."

*Dr. Charles T. Jackson*, the well-known chemist and State Assayer of Massachusetts, familiar with the microscope since 1825, finds upon microscopical examination the signature of No. 10 to consist of two inkings,— "a signature written in pale ink, being covered with a very thick and black and gummy ink."

*Lemuel Gulliver*, for over twenty years cashier of the National Union Bank, declares 10 and 15 forgeries, and traced from 1. He has great confidence in his opinion.



*Professor Eben N. Horsford*, formerly professor of chemistry in Harvard College, discovers, upon microscopical examination, signs of double writing in No. 10. He declares it to have been rewritten, or painted, as the expression is. He finds indications of tracing in both 10 and 15.

Finally, Professor *Benjamin Peirce*, formerly of Harvard College, now Superintendent of the Coast Survey, has, with his son, Mr. Charles S. Peirce, also a skilful mathematician, carefully examined the signatures and observed their coincidences. He has the "utmost degree of confidence" that No. 10 is not an original signature. In such marked language does he give his testimony, that the liberty is taken of transcribing a portion of it. After stating in detail his method of calculation, he proceeds,—

"In the case of Sylvia Ann Howland, therefore, this phenomenon could occur only once in the number of times expressed by the thirtieth power of five, or, more exactly, it is once in (2666) two thousand six hundred and sixty-six millions of millions of millions of times, or 2,666,-000,000,000,000,000,000.

"This number far transcends human experience. So vast an improbability is practically an impossibility. Such evanescent shadows of probability cannot belong to actual life. They are unimaginably less than those least things which the law cares not for.

"The coincidence which is presented to us in this case cannot therefore be reasonably regarded as having occurred in the ordinary course of signing a name. Under a solemn sense of the responsibility involved in the assertion, I declare that the coincidence which has here occurred must have had its origin in an intention to produce it. If coincidence is ever of any value as evidence concerning form, figure, or face, it is valid here; and it is utterly repugnant to sound reason to attribute this coincidence to any cause but design. But even here the statement of the case is not closed. There is still an impossibility to be piled upon the immense barrier which has been exhibited. The signatures which were compared together were all written upon ruled lines. The signatures Nos. 1 and 10 were not so written. Had they been so written, the improbability of coincidence would have been just that which I have given. An additional datum is required from observation; namely, the tendency to uniformity of level in the characteristic lines of Sylvia Ann Howland's signature when her writing was not guided by a ruled line. The means of obtaining this datum are meagre. Nevertheless, it is apparent from the irregular curvature of the lower lines of the few of her signatures which I have seen, written in this way, that her uniformity of placing her characteristic lines on a level was not so great as would be expressed by the number one-half; that is, it would not occur half the time with each characteristic line. But even were this the case, a complete uniformity in the level of all the characteristic lines would not occur once in two hundred millions of times. There is another practical impossibility, which is quite independent of that previously obtained. There is still to be introduced the improbability of having the two signatures at the same exact distance from the edge of the paper, which increases the improbability at least ten times, and probably a hundred-fold."

Against this vast mass of testimony it would seem as if no defence could be interposed. It should crush, one would say, by its enormous weight. Yet the complainant's counsel were not daunted. In the first place, to the theory, upon which hangs the reasoning of many of the defendant's witnesses, that no two signatures will ever cover, they oppose a flat denial. They go forth, apparently, into the community, and seek for signatures that will cover; and they are successful,—after how much search or how much disappointment it is not known. But the result must have exceeded their most ardent anticipations.

John Quincy Adams finds among the papers in the study of his grandfather, the President, many returned checks; of these, one hundred and ten are given to Mr. J. C. Crossman, an experienced engraver of Boston. These are carefully compared by him, one with another, and numbered,—making twelve thousand one hundred comparisons. Twelve signatures are selected as being the most similar, and are photographed in a magnified form, with the assistance of Mr. Black, the photographer. Two copies of all are made, one upon transparent paper, so that any one signature may be superposed on any other. These are filed in the case as exhibits, and the accuracy of their covering speaks for itself. The signature is "J. Q. Adams." They certainly show a most striking similarity, both in the formation of the letters and the spaces between both the words and the letters. Crossman, and many other experts, testify at length as to the comparisons. One is found which, in his judgment, shows a more accurate correspondence than 10 over 1. Several better than 1 over 10, or 15 over 1.

In like manner, the checks of Samuel W. Swett, president of the Suffolk National Bank of Boston, are taken: sixty-four given to the expert, four thousand and ninety-six comparisons made of his signature, seventeen enlarged photographs are made, which are treated in the same manner, and show a most remarkable uniformity. The same course is pursued with the signatures of Dr. Clement A. Walker, superintendent of the Boston Lunatic Hospital; Stephen Fairbanks, late treasurer of the Western Railroad; George C. Wilde, clerk of the Supreme Judicial Court; Francis W. Palfrey, counsellor-at-law, and special examiner for the court of the complainant's witnesses; and Joseph B. Spear, a copyist, former clerk to Governor Andrew. These signatures all show a remarkable uniformity, and in some of them the covering appears as remarkable as of those in the case at bar.

The result in general terms is, that several are found which cover as well, or about as well, as 10 covers 1; and very many that cover better than 1 covers 10, or 15 covers 1. By these the complainant's counsel claim to have destroyed the non-covering theory of the defendants, and advance one of their own, which is aptly exemplified in the words of Mr. Wilde: "I should think the uniformity of my signature has increased for the past ten or fifteen years; though, always having written with difficulty, I have written with care."

Not content with this, the complainant's counsel take the signatures of Sylvia Ann Howland upon the bills of lading produced as exemplars of her signature by the defendants, and photograph them, placing them in

succession one below the other, and claim by this means to show a great uniformity in Miss Howland's method of signing her name, also in the length of signatures and spacings of the words. Crossman testifies that one of these covers another almost as well as 10 covers 1; and finds several instances where the covering is better than 15 of 1, or 1 of 10.

Passing to the opinion of experts, the complainant calls *George H. Morse*, a plate engraver, of Boston, of twenty-five years' experience. After an examination of all the papers, including the signatures to the bills of lading, he finds no signs of tracing in 10 and 15, and pronounces them both genuine.

*Thomas C. Mullin*, a teacher of penmanship, has made the same examination, and believes the signatures genuine. He has seen writings cover quite as well, and would expect this to be the case with people who wrote a cramped or mechanical hand. It would be likely to be the case with a person who had not a good command over the pen, or a free use of their hands, but wrote carefully letter by letter, as a lame man would walk, step for step.

*Joseph A. Willard*, clerk of the Superior Court for the County of Suffolk, a well-known and highly esteemed expert in handwriting, declares the signatures of 10 and 15 genuine; and has seen signatures cover better, considering all the surrounding circumstances.

*Charles French*, the principal of French's Commercial and Nautical College, also a well-known and experienced expert of long standing, gives the same opinion, with a lengthy analysis.

*William H. Eaton*, of another commercial college bearing his name, called frequently as an expert for seventeen years, is convinced of the genuineness of the signatures. "It is quite a common occurrence with me," he says, "to notice that certain classes of writers repeat themselves;" and he distinguishes between people writing from the thumb joint and those writing with an arm motion, who generally write a freer hand, and are subject to more irregularities. A person in ill health, rarely writing, in a cramped position, and propped up, would be, he thinks, apt to repeat herself.

*W. W. Crago*, one of the counsel for the complainant, to be sure,—but the only witness called who had seen Miss Howland write,—thinks the signatures genuine.

*John A. Lowell*, engraver, can see no indications of tracing or of counterfeiting, and believes the signatures genuine. He also testifies, that if 15 had been traced from 1, and slipped in the tracing, at least forty separate slippings would be necessary to account for the differences.

*Georgo Pye*, a draughtsman, with much experience in tracing, finds no evidence that his art has been called in play.

*George Mathiot*, since 1850 in charge of the electrotype and photographic division of the Coast Survey, pronounces 15 to be a writing, made by a pen by the same hand that wrote 1, and infers the same of 10. He gives his opinion, that the tracing attributed to Miss Robinson "might possibly have been done by an ingenious card engraver, with his special appliances for tracing, but not by any person who had not united practice with great capabilities." He finds in the exhibits of the signatures of

President Adams, and some of the rest, greater similarities than exist between the genuine and disputed ones of Miss Howland.

*J. C. Crossman*, already referred to, has a great degree of confidence that the signatures are genuine, based on the resemblances, local and general, of the disputed signatures to those on the bills of lading, some of which bear signs of having been retouched by the writer.

Professor *Agassiz* has subjected the disputed signatures to a most searching microscopic test. Under a compound microscope, with a power exceeding thirty diameters, the paper appeared to consist of "fibres felted together, intercrossing each other in every direction, not unlike a pile of chips pressed together." The action of the ink on these fibres is analyzed and explained with his usual clearness; the thicker portions being accumulated upon the superficial fibres, like mud along the river-side after a freshet, while the more fluid portion has penetrated deeper. Pencil, not being a fluid substance, would have left a mark upon the superficial fibres; of this he finds no trace, nor is the surface of the paper disturbed as it would have been if india-rubber had been used. He declares that the inequality of the distribution of the ink has led to a mistaken theory about the lead pencil. He sees no marks of tracing.

*Dr. Oliver Wendell Holmes* finds nothing in the disputed signatures, while placed under the microscope, to give indication of the use of two inks, nor any thing to show that either had been traced.

In addition to this, the plaintiff called experts, who pronounced the Voigtlander lens used by the defendants in their photography to be inaccurate; and this, on the other hand, was rebutted by the defendants. Issues were raised as to the color produced in a photograph by certain colors in nature. Evidence was introduced tending to show that the defendants' photographs had been touched with a brush. Miss Alice Cornelia Driscoll, going to Whipple's photograph rooms, to examine some photographs of ladies and gentlemen of the American Baptist Missionary Union, being a young lady who testifies that she is careful in all things to study to show herself approved unto God, finds herself providentially brought into the peculiar circumstances of noticing another young lady, with bonnet and shawl, engaged with a brush over the signature of Sylvia Ann Howland; and she again is contradicted by evidence from this establishment.

Of the large amount of evidence reported more than half, doubtless, was inadmissible, and would have been excluded. One of the eminent counsel expressed the opinion, in argument, that all the testimony drawn from photographs was clearly inadmissible. We are not aware of any decision admitting such testimony upon a question of handwriting. It is hearsay of the sun. This case is an instance of the number of collateral issues raised. The correctness of the lens, the state of the weather, the skill of the operators, the color of the impression, the purity of the chemicals,—these, and many others issues, easily conceivable, would be raised in every case. Again, the competency of the similarity of the signatures of J. Q. Adams, Stephen Fairbanks, and the rest, seems extremely doubtful, as tending to prove that Sylvia Ann Howland's signatures would have the same similarity. True, this is introduced to contradict

assertions of the respondents' witnesses, that no two signatures of the same person would cover ; which was a reason given by many of them for their opinion of the want of genuineness of Sylvia Ann Howland's. But in point of fact, how can it be possible to argue one person's liability to reproduce her signature, from the habit of six others selected for this concededly singular peculiarity ? It would be as well, as was suggested, to infer one's power of shooting with precision, ploughing a straight furrow, or drawing a straight line from an examination of the performances of others. A variety of collateral issues are raised ; it must be shown not only that the person wrote the signature, but under what circumstances he wrote ; what was his bodily health and his state of mind ; and this must be repeated as to every signature. The book of exhibits of the signatures of John Quincy Adams and the rest does not show the average number of times the signatures of a certain number of individuals selected at hazard—for instance, on a page of a directory or in a college class—would cover ; but it merely shows, that after diligent search, and after much selection, signatures can be found that will cover. It certainly contradicts the broad assertion that such a thing has never existed, and is therefore impossible. In short, it shows it possible ; but affords no means of judging whether it is probable. But whether this reason of some of the respondents' witnesses for their opinion is sufficient ground for admitting the similarity of J. Q. Adams's signature, on a question of the forgery of Sylvia Ann Howland's, seems doubtful. If this evidence is competent, it certainly would have been admissible for the respondents to have rebutted by introducing photographs *ad infinitum* of the signatures of all the rest of the world ; and when would there have been an end to this testimony ?

[As no evidence existed that the "second page" ever formed a part of the aunt's will ; or that the aunt ever had any knowledge of the complainant's will, found in her trunk ; except the testimony of the complainant herself, the Court allowed her examination as a witness, but reserved for the final hearing the question of her competency and admissibility as a witness under section 858 Rev. Stat. U. S. and section 14 Gen. Stats. Mass., chap. 131. The Circuit Court finally refused to admit the complainant's testimony, and dismissed the bill with costs. An appeal was taken, but withdrawn, on a settlement between the parties whereby the complainant received her expenses, costs, and counsel fees. The probate of the will of September 1, 1863, therefore, remained undisturbed, and under the trusts of the will, the complainant received, during her life, the income of about one-half of the estate, in lieu of absolutely owning the whole estate.—ED.]